

Schmalensee Aff. ¶ 9 (9% drop in access charges between 1993 and 1996, while AT&T raises rates 22%); Hausman ¶¶ 28-32. Indeed, they have raised prices despite additional savings from new transmission technologies and lower equipment prices. *Id.*; *see* Schmalensee Aff. ¶ 9; MacAvoy Study at 96; WEFA Study at p. 11 (App. C at Tab 23) (failure to pass through cost reductions of 6 to 7 percent per year). The major carriers have, moreover, raised their discounted rates along with the basic rates off of which discounts are taken. Hausman Aff. ¶ 31; *see* Schmalensee Aff. ¶¶ 11, 16-17 (discounted rates yield “supracompetitive profits”).

Recent flat-rate promotions do not mark a substantial departure from the longstanding pattern of lock-step price increases. Schmalensee Aff. ¶¶ 12-14; Hausman Aff. ¶ 32. AT&T’s flat rate of 15 cents per minute — higher than its standard evening rate — does not benefit typical residential callers who place most calls during off-peak hours. Schmalensee Aff. ¶ 13. MCI’s flat rate of 14.5 cents and Sprint’s two-tiered plan of a 25 cent peak rate and 10 cent off-peak rate also provide modest relief at best.⁶³ The monthly consumer price index for interstate toll calls rose steadily during 1995 and 1996, with only minor declines in early 1997. *See* WEFA Study at p. 10. As Professor Schmalensee points out, “the only reason that many consumers might find the One Rate plan attractive today is that AT&T has substantially raised its basic rates over the last several years.” Schmalensee Aff. ¶ 14.

To the extent that there have been price reductions, they consist simply of passing only a portion of the interexchange carriers’ savings from recent access charge reductions, and were effected only because the Commission required AT&T to share some of its windfall with

⁶³. *See AT&T Calls MCI Flat Pricing More Than a Coincidence*, Newsbytes, Sept. 30, 1996.

residential consumers who pay undiscounted basic rates. See Hausman Aff. ¶ 32 (noting that none of the access charge savings was passed on to discount customers). In a competitive industry, regulators do not need to strong-arm competitors into passing on cost-savings to consumers. See Schmalensee Aff. ¶ 9.

The major carriers themselves concede that they do not compete for the business of the lowest volume callers. See id. ¶ 15. They have in the past claimed that these customers are served below cost, but that does not explain why mid-volume callers are denied discounts. See id. ¶¶ 15-17. Besides, even if claims of below-cost pricing were true, they would only highlight the need for additional competition to place pressure upon all carriers to lower operational and marketing costs.

C. Market Evidence Confirms that BellSouth's Entry into the InterLATA Market in Louisiana Will Benefit Consumers

BellSouth's entry into interLATA services in Louisiana will provide the needed competition and benefit long distance consumers through lower prices and/or higher quality service. Moreover, by chipping away at costly barriers between local and long distance services, BellSouth's entry will bring further benefits. The United States is the only nation in the world that rigidly divides local from long distance telephone service and thereby deprives consumers the benefits of both vertical integration and additional competitors in long distance. Hausman ¶¶ 26-27; see also Gilbert Aff. ¶ 44 (App. A at Tab 3). Despite hypothetical possibilities of anticompetitive conduct, every other country that has permitted competition in long distance has decided that the benefits of allowing incumbent LECs to participate outweighs possible anticompetitive concerns. Hausman Aff. ¶ 26. The record of incumbent LECs' competitively

beneficial provision of vertically related services makes clear that the unanimous conclusion of all these other nations is correct.

1. *Evidence of Competition Where LECs Have Been Allowed to Offer Long Distance*

Uniform historical experience confirms the potential benefits of in-region interLATA entry by BellSouth. As the Commission itself has recognized, the "recent successes of [SNET] and GTE in attracting customers for their long distance services illustrates the ability of local carriers to garner a significant share of the long distance market rapidly;" "recent studies" based upon these positive market experiences "have predicted that AT&T's share of the long distance market may fall to 30 percent with BOC entry," and such "additional competition in the long distance market is precisely what the 1996 Act contemplates and is welcomed." Michigan Order ¶ 15.

Long distance customers in Connecticut have benefitted from SNET's price competition since it entered the interstate market in 1994.⁶⁴ On average, SNET's residential long distance rates have been 17-18 percent lower than AT&T's. Hausman Aff. ¶¶ 16-19. These savings have especially benefitted low-volume callers who, prior to SNET's entrance, had disproportionately stayed with AT&T because they were ignored by other carriers. See Schmalensee Aff. ¶¶ 25-28. SNET has shown both a willingness and ability to compete for this segment of the market, attracting a much higher share of interstate customers than interstate revenues.⁶⁵

⁶⁴ Consumers of intrastate services also have benefitted, as AT&T responded to SNET's long distance offerings with competitive intrastate offerings. See Gilbert Aff. ¶¶ 37-38.

⁶⁵ See Susan Jackson, A Telecom Yankee Defends its Turf, Business Week, Oct. 28, 1996, at 167.

To compete with SNET, AT&T petitioned the Commission for authority to reduce its long distance rates specifically for Connecticut.⁶⁶ AT&T's stated reason for the petition was "the rapidly emerging competition from SNET in Connecticut."⁶⁷ AT&T thus effectively admitted that it faces more intense competition in Connecticut than elsewhere because the incumbent LEC has been allowed to enter the long distance market.⁶⁸

The two geographic corridors running from New York City and Philadelphia to New Jersey offer another example in which incumbent local exchange carriers — in this case Bell Atlantic and NYNEX — have competed in in-region, interLATA services by setting prices below those of the major carriers. AT&T concedes that Bell Atlantic's corridor rates are as much as one-third lower than AT&T's,⁶⁹ and credits Bell Atlantic's widespread marketing of "sav[ings] over AT&T's basic rates" for Bell Atlantic's 20 percent market share of interstate corridor calls.⁷⁰ See Taylor Direct Testimony at p. 18 (App. C at Tab 23). AT&T and MCI sought permission to reduce their rates in these corridors precisely because they face more intense competition there

⁶⁶. See AT&T Comments, Market Definition, Separations, Rate Averaging and Rate Integration, at 29, Policy and Rules Concerning the Interstate, Interexchange Marketplace & Implementation of Section 254(g), CC Docket No. 96-61 (FCC Apr. 19, 1996) ("AT&T Rate Averaging Comments"); AT&T Corp.'s Petition for Reconsideration, Policy and Rules Concerning the Interstate, Interexchange Marketplace at 2-5 (FCC Sept. 16, 1996); see also *supra* at 3-4 (discussing nationwide rate increases).

⁶⁷. AT&T Petition for Reconsideration at 2.

⁶⁸. See *id.* at 2-5; AT&T Rate Averaging Comments at 29.

⁶⁹. AT&T Corp.'s Petition for Waiver and Request for Expedited Consideration, AT&T Petition for Waiver of Section 64.1701 of the Commission's Rules, CC Docket No. 96-26 Attachment A (FCC filed Oct. 23, 1996) ("AT&T Waiver Petition").

⁷⁰. *Id.* at 3.

than elsewhere.⁷¹ Neither questions that consumers in these corridors are better off because of price competition from the incumbent Bell company.⁷²

Evidence from foreign markets confirms this domestic experience. In Canada, where the incumbent local carrier has been allowed to offer long distance toll service, long distance rates are lower than in this country even though carriers use essentially the same equipment as in the United States to serve less densely populated areas. Hausman Aff. ¶ 27; see Gilbert Aff. ¶ 44 & n.70. Conversely, healthy competition to the vertically integrated incumbent carrier has developed in the United Kingdom, notwithstanding that regulators have done considerably less to open local markets than was done by the 1996 Act in the United States. Gilbert Aff. ¶ 44.

2. *BellSouth Is Suited to Break Up the Interexchange Oligopoly in Louisiana*

BellSouth will offer consumers these same sorts of competitive benefits when it provides in-region, interLATA service in Louisiana.

BellSouth has an affirmative incentive to lower long distance prices in Louisiana, because increased interLATA usage will increase usage of BellSouth's access services as well. See Hausman Aff. ¶¶ 12-14. Indeed, BellSouth has committed, upon receiving interLATA authority, to setting its initial basic rates at least 5% lower than the corresponding rates of the largest

⁷¹ See id. at 1, 5; MCI Comments at 1, AT&T Petition for Waiver of Section 64.1701 of the Commission's Rules, CC Docket No. 96-26 (FCC filed Nov. 18, 1996) ("MCI Comments") (petitioning the Commission "so that [MCI] likewise will be in a position to benefit consumers by being able to compete effectively against Bell Atlantic and AT&T").

⁷² See AT&T Waiver Petition at 5 (consumers in the corridors, unlike other areas, "benefit from the highest degree of competition possible"); MCI Comments at 3 ("fully support[ing]" AT&T's "arguments").

interexchange carrier. See Harralson Testimony at p. 1219 (App. C at Tab 68). All types of consumers will benefit. For example, in addition to authorizing carriage of calls "originating in" Louisiana under section 271(b)(1), approval of this application will further benefit competition by allowing BellSouth to provide interLATA toll-free and private line services under section 271(j). See Jarvis Aff. ¶ 5. BellSouth thus will be able to provide customers in Louisiana inbound 800 and 888 service from any location across LATA boundaries (relief that was granted to the BOCs for out-of-region customers under sections 271(b)(2) and 271(j)).

BellSouth is, moreover, well-positioned to spur the competition that will lower interexchange prices. BellSouth has honed its marketing skills as a wireless carrier in Louisiana, as well as a provider of other competitive offerings such as exchange access to business customers, Centrex service, customer premises equipment, and directories. These experiences will enable BellSouth to provide better interexchange services to Louisiana and to sell them effectively. See Schmalensee Aff. ¶¶ 30-37. BellSouth also could reduce costs by using existing sales and customer support systems (in compliance with the requirements of section 272). See Gilbert Aff. ¶¶ 24-28; Schmalensee Aff. ¶ 29. AT&T secured approval to acquire McCaw in part on such grounds. Applications of Craig O. McCaw, 9 FCC Rcd 5836, 5885, ¶ 83 (1994), aff'd sub nom. SBC Communications Inc. v. FCC 56 F.3d 1484 (D.C. Cir. 1995).

Above all, however, BellSouth's brand name will make it a strong competitor to the three major incumbents. The BellSouth brand is recognized by approximately 70 percent of consumers in region — less than AT&T and MCI, but high in relation to other potential entrants into long distance. Gilbert Aff. ¶ 17. BellSouth's reputation is on par with that of the major incumbent

interexchange carriers: better than three out of four customers rated BellSouth as "very good" in the categories of customer service and service reliability/product quality. Schmalensee Aff. ¶ 32. Indeed, BellSouth received the highest customer satisfaction rating of any major LEC in a recent survey.⁷³ These factors will give BellSouth lower marketing costs in-region than other potential new entrants and position BellSouth as a serious competitor to AT&T, MCI, and Sprint.⁷⁴

BellSouth's marketing strength will be most pronounced among current BellSouth customers who are part of a low-volume market segment that is "neglected in the competition among interexchange carriers." Schmalensee Aff. ¶ 26. The failure of the three large carriers to market services to this group leads many residential and small business customers to choose AT&T out of inertia, without giving other carriers serious consideration. See id. ¶¶ 27-28. If BellSouth (and other Bell companies across the country) can make competitive inroads, however, AT&T, MCI, and Sprint are likely to respond with new promotions and expanded eligibility for targeted offerings, to the benefit of low-volume callers. Id. ¶ 37.

Likewise, BellSouth will be able to offer bundled service offerings and "one stop shopping." Bundled service packages can "have clear advantages for the public," such as greater convenience and the ability to secure volume discounts by aggregating purchases of different

⁷³ J.D. Power and Associates, 1997 Residential Local Telephone Study, RBOCs Achieve Higher Customer Satisfaction than Independent Carriers: BellSouth Top Carrier for Second Year, Aug. 26, 1997 <<http://www.jdpower.com//0826pho.html>>.

⁷⁴ See Schmalensee Aff. ¶ 37; Gilbert Aff. ¶ 28; see also Applications of Craig O. McCaw, 9 FCC Rcd at 5871-72, ¶ 57 (AT&T's acquisition of McCaw would serve the public interest due to AT&T's brand name, financial strength, marketing experience, and technological know-how).

services.⁷⁵ The Commission thus has supported developments that promise to speed the introduction of bundled services at the retail level. This was one reason why the Commission approved AT&T's buyout of McCaw Cellular Communications, saying it "would deny users the current and prospective benefits of bundling only if presented with a compelling public interest justification" for doing so. 9 FCC Rcd at 5880, ¶ 75; see Gilbert Aff. ¶ 19.

BellSouth will not be the only, or even the first, carrier to market bundled offerings, and it will have no unfair advantage in providing bundled packages. See Gilbert Aff. ¶¶ 7-16.⁷⁶ Bundled offerings are the cornerstone of interexchange carriers' plans for entering the local exchange. AT&T, for example, has announced that it plans to "take a basic \$25-a-month long distance customer and convert him or her into a \$100-a-month customer for a broader bundle of services." AT&T Challenges the Bell Companies, Wall St. J., June 12, 1996, at A3; see Gilbert Aff. ¶¶ 7-19 (describing AT&T's plans). MCI is offering long distance, cellular service, Internet access, and MCImetro local service on the same bill in some States. Gilbert Aff. ¶ 10. Sprint is bundling its

⁷⁵. Applications of Craig O. McCaw, 9 FCC Rcd at 5879-80, ¶¶ 73-75; see 141 Cong. Rec. S713 (daily ed. Feb. 1, 1996) (statements of Sen. Harkin) (1996 Act will allow "low cost integrated service with the convenience of having only one vendor and one bill to deal with"); S. Rep. No. 104-23, at 43 (joint offerings constitute a "significant competitive marketing tool"); see also Gilbert Aff. ¶ 16 ("Consumers will benefit from the integration of service offerings and the marketing of bundled products through convenience and through the increased number and variety of telecommunications options available in the marketplace."); Hausman Aff. ¶ 7.

⁷⁶. As Gilbert explains, "[a]ny argument that the offering of integrated packages of local and long distance services could lead to a return of the market structure that existed prior to the Modification of Final Judgment ("MFJ") is not justified by market realities. The structure of the telecommunications marketplace has changed dramatically since the MFJ's break-up of AT&T. Not only will there now be several competitors offering packages in a given geographic market, but the local and long distance markets separately will be subject to competition." Gilbert Aff. ¶ 23.

long distance offerings with local wireline service, cable television, and PCS offerings. Id. ¶¶ 11-14. Following MFS Communications' merger with the Internet access provider UUNet and the long distance carrier WorldCom (to form the entity that now wants to buy MCI), the merged entity's President explained: "We are creating the first company since the breakup of AT&T to bundle together local and long distance service carried over an international end-to-end fiber network owned or controlled by a single company." Communications Firms to Join in \$12-Billion Deal, Los Angeles Times, August 27, 1996, at A-1 (see also Gilbert Aff. ¶ 15).

A recent study by J.D. Power and Associates found that 65 percent of households are likely to sign up with one company for all their telecommunications services, with the majority choosing their current long distance carrier as that sole provider. Gilbert Aff. ¶ 18. Congress recognized the importance of bundled offerings to the development of local and long distance competition, noting that a "full 86 percent of . . . small business owners want one-stop shopping for telecommunications services" and that "[t]wo-thirds of them want to be able to choose one provider that can give them both local and long-distance telephone service." 141 Cong. Rec. S7903 (daily ed. June 7, 1995) (statement of Sen. Burns). Legislators considered bundling so important that they barred the major interexchange carriers from jointly marketing resold local service with their own long distance services until the incumbent Bell company has an equal ability to combine local and long distance offerings. 47 U.S.C. § 271(e)(1).

Approval of BellSouth's petition also will lift remaining prohibitions on BellSouth's participation in telecommunications equipment manufacturing and allow BellSouth to pursue all opportunities in this area, subject to statutory and regulatory safeguards. See id. § 273(a);

S. Rep. No. 104-23, at 67 (allowing Bell Companies to engage in manufacturing will “foste[r] competition . . . and creat[e] jobs along the way”). Only the currently dominant equipment manufacturers support these archaic restrictions, for “[a]lmost everyone else in the domestic market has been disadvantaged, either from a negative impact on efficiency or through loss of investment and opportunities.” Kettler Aff. ¶ 17 (App. A at Tab 8). For instance, smaller telecommunications equipment manufacturers have strongly supported BellSouth’s application for interLATA relief in South Carolina, based upon their expectation that BellSouth’s ability to “have more normal business relationships” with unaffiliated manufacturers will benefit the domestic manufacturing industry as a whole. Comments of Ad Hoc Manufacturers, Application by BellSouth for Provision of In-Region, InterLATA Services in South Carolina at 17-24, CC Dkt. 97-208 (FCC Oct. 20, 1997).

Finally, approval of this application would trigger “1+” intraLATA competition in Louisiana, intensifying competition in the intraLATA toll market as well. See 47 U.S.C. § 271(e)(2). The Louisiana PSC has issued a General Order establishing regulations for 1+ presubscription, and BellSouth has filed a tariff with the State commission for services that will be required to implement intraLATA toll dialing parity. Varner Aff. ¶ 199 & Ex. AJV-5. These tariffed offerings will become effective when BellSouth receives authorization to provide interLATA services in Louisiana. Id. ¶ 191. IntraLATA toll presubscription will be implemented using a two-PIC method, allowing the customer to choose different carriers for intraLATA toll and interLATA calls. Id. ¶ 192. Cost recovery for the incremental costs of dialing parity will be implemented in a competitively neutral manner over a four year period. Id. ¶ 193.

The rivalry between SNET and AT&T in Connecticut — which quickly spilled over from interstate services to intrastate toll — indicates how, in a world of bundled service offerings, greater competition in interLATA services will benefit Louisianans across a range of telecommunications services including local and intraLATA toll. See Gilbert Aff. ¶¶ 34-38; Hausman Aff. ¶¶ 10 n.13, 22.

While it is difficult to quantify such benefits with precision, estimates are available. An analysis conducted by the WEFA Group predicts that long-distance rates will drop by 25 percent as a result of Bell company in-region, interLATA entry. WEFA Study at p. 11; Raimondi Testimony at p. 5 (App. C at Tab 23). The study estimates that BellSouth's entry into the interLATA long distance markets throughout Louisiana will by the year 2006 generate an additional 7,600 new jobs in the state and increase the gross state product by approximately \$922 million. WEFA Study at pp. 1-2, 21. An independent economist, Loren Scott, Chairman of the Economics Department and Director of the Economic Development and Forecasting Division of Louisiana State University, has confirmed that the WEFA model was based on reliable assumptions and that its results are reasonable and conservative estimates. Scott Aff. at p. 5 (App. C at Tab 23).

These estimates are consistent with the work of other prominent economists. Dr. Paul MacAvoy of Yale projects that, nationwide, the total gains to consumers from unrestricted Bell company entry into the long distance market would be as high as \$306 billion, even if AT&T, MCI, and Sprint "maintain their tacitly collusive pricing strategies." MacAvoy Study at p. 185. During debates on the 1996 Act, Congress relied upon estimated savings of \$333 billion from

greater long distance competition. 141 Cong. Rec. S704 (Feb. 1, 1996) (statement of Sen. Ford). Relying upon actual market experience with local telephone company entry into long distance as well as incumbent LECs' economic incentive to lower prices upon vertical integration, Professor Hausman anticipates that prices would fall by about 17-18 percent as a result of in-region entry by the Bell companies, and that residential customers alone stand to benefit by about \$7 billion per year. Hausman Aff. ¶¶ 5, 20-23.

In other proceedings, the incumbent interexchange carriers and the Department of Justice have questioned the magnitude of the consumer savings that will result from Bell company entry into long distance. See DOJ South Carolina Evaluation at 48-49. The important thing, however, is the indisputable fact of significant consumer benefits from greater interLATA competition. The Justice Department's consultant, for instance "expect[s] price reductions." Schwartz Supplemental Aff. ¶ 77 (filed with DOJ South Carolina Evaluation). Whether these benefits total \$7 billion per year, \$10 billion per year, or a "mere" \$1 or \$2 billion per year is nearly immaterial for purposes of this application, because the public interest requires that consumers be allowed to reap any possible benefits from competitive markets where, as here, there are no offsetting costs.

D. BellSouth's Entry into the InterLATA Market, Subject to Extensive Statutory and Regulatory Safeguards, Presents No Risk to Competition

For all its potential strengths as a competitor, BellSouth has absolutely no ability to impede competition by entering the interLATA market. The 1996 Act and regulatory reforms have rendered 20-year-old worries about cross-subsidy and network discrimination obsolete.

1. Regulation and Practical Constraints Make "Leveraging" Strategies Impossible to Accomplish

In light of the federal and state safeguards that prevent Bell companies from engaging in anticompetitive conduct upon entering long distance, the Commission recently held that the Bell companies should be regulated as non-dominant when they provide in-region, interLATA services.⁷⁷ It found that Bell companies could not drive other interexchange carriers from the market through cost misallocation, that federal and state price caps reduce incentives to misallocate costs, and that existing safeguards "will constrain a BOC's ability to allocate costs improperly and make it easier to detect any improper allocation of costs that may occur." *Id.* ¶ 105. The Commission likewise dismissed fears of predation against the established long distance incumbents, *id.* ¶ 108; found that the numerous protections against discrimination will prevent Bell companies from gaining market power upon entry through such tactics, *id.* ¶¶ 111-119; and concluded that any risk of price squeezes can be addressed through FCC procedures and the antitrust laws, *id.* ¶¶ 128-129. Finally, the Commission recognized "that the entry of the BOC interLATA affiliates into the provision of in-region, interLATA services has the potential to increase price competition and lead to innovative new services and market efficiencies." *Id.* ¶ 134.

⁷⁷. Second Report and Order in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61, Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate Interexchange Marketplace, FCC No. 97-142 (rel. Apr. 18, 1997) ("BOC Non-Dominance Order").

Each of these conclusions is buttressed by the success that federal and state regulators have had in regulating Bell companies over the years, as well as by the new, additional safeguards imposed by the 1996 Act and the Commission's implementing regulations. As a former Deputy Assistant Attorney General for Economics in the current Administration's Antitrust Division explains, existing safeguards "expressly and comprehensively" address potential harms. Gilbert Aff. ¶ 43.

a. Cost Misallocation. Theories that BellSouth might shift costs incurred in providing interLATA services to local ratepayers, thereby giving itself a competitive edge as an interLATA carrier, are premised upon the assumption that BellSouth "is regulated under rate-of-return regulation." Notice of Proposed Rulemaking, Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended, 11 FCC Rcd 18877, 18882-83, ¶ 7 (1996) ("Non-Accounting Safeguards NPRM.")⁷⁸

To cure this problem, the Commission has totally overhauled its approach to rate regulation. See Hausman Aff. ¶ 34. The Commission adopted a price cap regime that sets maximum rates almost entirely without regard to costs, thereby giving LECs "a powerful profit incentive" to cut the costs of their regulated services. National Rural Telecom Ass'n v. FCC, 988 F.2d 174, 178 (D.C. Cir. 1993). There is no "reward for shifting costs from unregulated activities into regulated ones, for the higher costs will not produce higher legal ceiling prices." *Id.*; see

⁷⁸ The Department of Justice contended in supporting approval of the MFJ that the Bell System's alleged practice of subsidizing its competitive offerings at ratepayers' expense "stem[med] . . . directly from AT&T's status as a rate-of-return regulated firm . . ." Competitive Impact Statement at 13, United States v. AT&T, No. 74-1698 (D.D.C. Feb. 10, 1982).

Non-Accounting Safeguards NPRM, 11 FCC Rcd at 18942-43, ¶ 136 (Commission's price cap policies "reduc[e] the potential that the BOCs would improperly allocate the costs of their affiliates' interLATA services"); Hausman ¶ 34. Indeed, the Commission has described price cap regulation as providing strong "efficiency incentives" to keep down costs allocated to regulated services. Report and Order, Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996, 11 FCC Rcd 17539, 17605-06, ¶ 145 ("Accounting Safeguards Order"); see also Illinois Public Telecommunications Ass'n v. FCC, 117 F.3d 555, 570 (D.C. Cir. July 1, 1997) (under price caps "risk of loss" is borne by "investors rather than ratepayers"), clarified, Case No. 96-1394, slip op. (D.C. Cir. Sept. 16, 1997); Hausman Aff. ¶¶ 35-36.⁷⁹

Congress nevertheless took steps to address supposed worries about possible cost misallocation. In section 272 of the 1996 Act, Congress sharply reduced opportunities for cost-shifting by requiring that a Bell company provide long distance through an affiliate that has separate facilities, employees, and record-keeping from the local telephone company. 47 U.S.C. § 272. Moreover, Congress reinforced structural separation with demanding accounting requirements. See id. § 272(d), Hausman Aff. ¶ 37. Legislators concluded, after hearing arguments on all sides, that these statutory safeguards and the Commission's implementing rules

⁷⁹. To the extent that improper cost sharing may formerly have been a concern, see Non-Accounting Safeguards NPRM, 11 FCC Rcd at 18942-43, ¶ 136, that concern is addressed by the Commission's recent decision to eliminate sharing entirely. Fourth Report and Order in CC Docket No. 94-1 and Second Report and Order in CC Docket No. 96-262, Price Cap Performance Review for Local Exchange Carriers and Access Reform Charge, FCC 97-159, ¶¶ 147-155 (rel. May 21, 1997); see Hausman Aff. ¶ 34.

would be sufficient to deal with concerns about Bell company cost misallocation. See, e.g., 47 U.S.C. § 254(k) (requiring Commission to implement regulations as necessary “to ensure that” revenues from regulated services are not used to subsidize competitively provided services). The Commission has likewise expressed confidence in the efficacy of structural separation in various contexts.⁸⁰

Beyond this statutory requirement, the Commission has explained that its preexisting “cost allocation and affiliate transactions rules, in combination with audits, tariff review, and the complaint process, have proven successful at protecting regulated ratepayers from bearing the risks and costs of incumbent local exchange carriers’ competitive ventures.” Accounting Safeguards Order, 11 FCC Rcd at 17550-51, ¶ 25. The Commission reasoned that these rules together “will effectively prevent predatory behavior that might result from cross-subsidization,” and that because they “have proven generally effective” there was “no reason to require a change to a different system.” Id. 17551, ¶ 28, 17586, ¶ 108; see also First Report and Order, Access Charge Reform, CC Docket No. 96-262, FCC No. 97-158, ¶ 283 (rel. May 16, 1997) (“Access Reform Order”) (price caps protect against cross-subsidization).

Louisiana regulators have implemented a parallel regulatory regime that contains many of these same protections. Like the Commission, the Louisiana PSC has abandoned rate-of-return regulation in favor of price-cap regulation. See Woroch Aff. ¶ 53; see also Roberts Aff. ¶ 44

⁸⁰ Report and Order, Inquiry into the Use of the Bands 825-845 MHz and 870-890 MHz for Cellular Communications Sys., 86 F.C.C. 2d 469, 494, ¶ 50 (1981) (cellular); Final Decision, Amendment of Section 64.702 of the Commission’s Rules and Regulations (Second Computer Inquiry), 77 F.C.C.2d 384, 453 ¶ 177 (Bell System), aff’d sub nom. Computer and Communications Indus. Ass’n v. FCC, 693 F.2d 198, 211 (D.C. Cir. 1982).

(App. A at Tab 10). The Louisiana PSC also matches this Commission's accounting requirements, imposing similar record-keeping and reporting requirements and carrying out periodic audits. Cochran Aff. ¶ 14; Woroch Aff. ¶ 53.

b. Other Pricing Strategies. Just as cost misallocation would be impossible to accomplish, BellSouth would not and could not raise the cost of its access services in an effort to effectuate a "price squeeze" on other interexchange carriers.⁸¹ The Commission has cited a host of factors that "constrain the ability of a [Bell company or its] interLATA affiliate to engage in a predatory price squeeze," and concluded that Bell companies "will not be able to engage in a price squeeze to such an extent that the [Bell company] interLATA affiliates will have the ability, upon entry or soon thereafter, to raise price by restricting their own output." BOC Non-Dominance Order ¶ 129; see also Access Reform Order, ¶ 278 ("we have in place adequate safeguards against such conduct"). The Commission likewise concluded that a strategy of providing long distance services below cost to drive out competitors could not be profitable for Bell companies because losses incurred in predation could not later be recovered through supra-competitive pricing. Id. ¶ 108; see also Non-Accounting Safeguards NPRM, 11 FCC Rcd at 18943-44, ¶ 137; Hausman Aff. ¶ 38.

Wholly aside from regulatory safeguards, "predatory pricing schemes are rarely tried, and even more rarely successful." Brooke Group v. Brown & Williamson Tobacco Corp., 509 U.S. 209, 226 (1993) (citations omitted); see Roberts Aff. ¶ 54. In an industry with standardized

⁸¹. See generally Town of Concord v. Boston Edison Co., 915 F.2d 17, 18 (1st Cir. 1990) (per Breyer, J.) (discussing theory of price squeezes), cert. denied, 499 U.S. 931 (1991).

technologies and sophisticated incumbents, it is "especially unlikely" that BellSouth could employ the classic predatory strategy of lowering prices below cost to affect competitors' assessments of future competition. *Id.* ¶¶ 24, 46-48; see also Gilbert Aff. ¶¶ 43-46. Realistically, moreover, any attempt to drive out large and well-financed incumbent carriers who have made mammoth sunk investments would be doomed. Roberts Aff. ¶¶ 46-47.

c. Price Discrimination. Perhaps the weakest of all theories advanced by those with a vested interest in delaying interLATA competition is that Bell companies might discriminate in the pricing of their exchange access services. The Commission has for years "require[d] any exchange carrier offering interexchange service to impute to itself the same costs that it uses to develop the access rates that it charges its interexchange customers." Order on Reconsideration, Policy and Rules Concerning Rates for Dominant Carriers, 6 FCC Rcd 2637, 2714, ¶ 168 (1991). Consistent with that regulatory requirement, Congress specifically provided that the Bell company must charge its affiliate, or impute to itself, "an amount for access to its telephone exchange service and exchange access that is no less than the amount charged to any unaffiliated interexchange carriers for such service." 47 U.S.C. § 272(e)(3). The Commission thus rightly has concluded that "the statutory and regulatory safeguards . . . will prevent a [Bell company] from discriminating to such an extent that its interLATA affiliate would have the ability, upon entry or shortly thereafter, to raise the price of in-region, interstate, domestic, interLATA services." BOC Non-Dominance Order ¶ 119.

d. Technical Discrimination. Theories that BellSouth might impede competition by engaging in technical discrimination are equally unfounded. AT&T, MCI/British

Telecom (/WorldCom or /GTE), and Sprint/Centel/Deutsche Telekom/France Telecom are sophisticated, vertically integrated goliaths with revenues much greater than BellSouth's and the expertise and resources to detect and challenge systematic discrimination. See Gilbert Aff. ¶¶ 46-47, 49. Indeed, to state how discrimination against them would have to occur is virtually to prove its impossibility: In order to gain an anticompetitive edge, BellSouth would have to provide inferior access services to its major competitors, without disrupting its own local or long distance services, in a fashion that cannot be proved by other interexchange carriers or detected by regulators, yet is so apparent to customers that it drives them to switch to BellSouth's long distance service, but not the service of some other competitor. See Hausman Aff. ¶ 40; see also Gilbert Aff. ¶¶ 46-47 (no harm to competition unless discrimination raises consumer prices). When one considers these realities, it is not surprising that incumbent interexchange carriers never have produced specifics (much less hard evidence) as to the precise form hypothetical future discrimination would take, how it is feasible, what effect it would have on consumer decision-making, what costs it would impose on interexchange carriers, or how it would reduce competition and increase prices.

To accomplish discrimination, BellSouth would have to circumvent the mechanization of its technical and operations systems, including assignment and provisioning processes. It would have to bypass the SONET capabilities used by many interexchange carriers to reconfigure immediately their networks should a malfunction or service degradation occur. Gunter Aff. ¶¶ 40-42 (App. A at Tab 4). If technically possible at all, this would require substantial and visible investments, participation by large numbers of employees, and the cooperation of hardware and

software vendors who have no interest in favoring BellSouth's interLATA services operations, all of which make such a strategy unthinkable. *Id.* ¶ 40. Of course, there also would be no guarantee that customers who are unhappy with their existing long distance carrier would switch to BellSouth; targeted discrimination against, say, Sprint, would send many customers to AT&T and MCI, giving BellSouth no benefit. *Cf. United States v. Western Elec. Co.*, 993 F.2d 1572, 1579 (D.C. Cir. 1993) (noting that discrimination is unlikely where "customers could readily shift to the BOC's larger competitors") *cert. denied*, *Consumer Fed'n of America v. United States*, 510 U.S. 984 (1983).

Furthermore, BellSouth has been providing exchange access services to the long distance industry for over a dozen years. Interexchange carriers can and do directly monitor BellSouth's performance, making it "likely that an IXC would detect any degradation in BellSouth's access service long before any customer could notice that degradation and attribute it to the IXC." Gilbert Aff. ¶¶ 46-47. BellSouth's interconnection arrangements with all the major interexchange carriers establish specific criteria for service quality and procedures for the interexchange carrier to monitor BellSouth's performance. Gunter Aff. ¶¶ 28-32. In addition, BellSouth is required to file various reports, of proven effectiveness, with the Commission. *See Varner Aff.* ¶ 212; Gilbert Aff. ¶ 48.⁸² And, BellSouth is subject to rigorous industry standards which "neither BellSouth,

⁸² *See also, e.g., Order, Revisions of ARMIS Quarterly Report*, 11 FCC Rcd 22508, 22515, ¶¶ 20, 22 (1996) (reporting of, *inter alia*, information about trunk blockage, total switch downtime, and consumer satisfaction); *Id.* at 22515, ¶ 20 (reporting of installation and repair intervals); *Non-Accounting Safeguards Order*, 11 FCC Rcd at 22020, ¶ 242, 22081, ¶ 368 (reporting of the "service intervals in which the BOCs provide service to themselves or their affiliates").

nor RBOCS generally, nor anyone else is able to affect or influence . . . without technical justification and industry consensus.” Gunter Aff. ¶ 20; see Woroch Aff. ¶¶ 30-31.

The Commission recently rejected additional reporting requirements because “sufficient mechanisms already exist within the 1996 Act both to deter anticompetitive behavior and to facilitate the detection of potential violations of section 272 requirements.” Non-Accounting Safeguards Order, 11 FCC Rcd at 22060-61, ¶ 321. Indeed, the Commission explained that “the reporting requirements required by the 1996 Act, those required under state law, and those that may be incorporated into interconnection agreements negotiated in good faith between BOCs and competing carriers will collectively minimize the potential for anticompetitive conduct by the BOC and its interexchange operations. In addition to deterring potential anticompetitive behavior, these information disclosures will also facilitate detection of potential violations of the section 272 requirements.” Id. at 22063-64, ¶ 327.

Suggestions that a Bell company might seek to slow-roll interexchange carriers in developing and implementing new access arrangements are equally unfounded. The 1996 Act provides that a Bell telephone operating company “may not discriminate between that company or affiliate and any other entity in the provision or procurement of goods, services, facilities, and information, or in the establishment of standards,” 47 U.S.C. § 272(c)(1); must fulfill “any requests from an unaffiliated entity for telephone exchange service, and exchange access within a period no longer than the period in which it provides such telephone exchange service and exchange access to itself or to its affiliates,” id. § 272(e)(1); and may not provide facilities, services, or information concerning exchange access to its long distance affiliate unless they are

made available to other providers of interLATA service on the same terms and conditions, id. § 272(e)(2), (4). See Gilbert Aff. ¶¶ 42-43; Woroch Aff. ¶ 58.

Regulators should have no trouble enforcing these requirements. The Commission has explained that existing rules relating to enhanced services and customer premises equipment currently protect against analogous discrimination. Non-Accounting Safeguards NPRM, 11 FCC Rcd at 18915-16, ¶ 75. Moreover, access revenues account for one-quarter of BellSouth Telecommunications' total operating revenues, 1996 Annual Report at 20. BellSouth thus has an affirmative incentive to provide higher-quality or lower-cost access to interexchange carriers, so as to increase demand for its exchange access services and avoid the loss of access revenues that would result if interexchange carriers provided their own access services or obtained access services from a facilities-based competitor to BellSouth. See Schmalensee Aff. ¶ 45; Woroch Aff. ¶ 77 (discussing access competition in Louisiana). All that will be required in the context of new exchange access arrangements is an evolution of existing, routinized, and mutually advantageous arrangements between interexchange carriers and BellSouth, which leave no room or reason for misconduct.

e. Misuse of Confidential Information. Section 272(c)(1) prohibits a Bell company from discriminating "in the provision or procurement of goods, services, facilities, or information." The Commission has interpreted "information" in section 272(c)(1) so that it "includes, but is not limited to, CPNI and network disclosure information." Non-Accounting Safeguards Order, 11 FCC Rcd at 22010, ¶ 222. Accordingly, a Bell company must make such information available to other interexchange carriers on the same terms and conditions as its own

long distance affiliate. Id.; see Woroch Aff. ¶ 70 (citing Statement and agreement provisions governing confidentiality).

The Commission has explained that its "current network disclosure rules are sufficient to meet the requirement of section 272(e)(2) that BOCs disclose any 'information concerning . . . exchange access' on a nondiscriminatory basis." Non-Accounting Safeguards Order, 11 FCC Rcd at 2206, ¶ 253. Commission regulations also have long governed, and will continue to regulate, access to competitively useful information concerning particular customers. See id. at 22010, ¶ 222 (noting separate CPNI proceeding). Under the Commission's rules, for example, Bell companies must disclose CPNI to unaffiliated enhanced service providers and CPE suppliers at the customer's request; bar their own enhanced service sales personnel from accessing certain CPNI without customer authorization; and notify multi-line business customers of their CPNI rights each year.⁸³

f. Penalties. In light of its inability to engage in cost misallocation or any form of discrimination, there simply would be no reason for BellSouth to risk the substantial penalties likely to follow such a fruitless endeavor. If BellSouth were to violate any provision of the Communications Act of 1934 it would be required to pay civil fines, 47 U.S.C. § 202(c), and would be liable to injured parties for the amount of their injuries plus attorneys' fees. 47 U.S.C. §§ 206-207. In addition, section 220(e) of the Communications Act imposes criminal penalties

⁸³ See Report and Order, Furnishing of Customer Premises Equipment by the Bell Operating Companies and the Independent Telephone Companies, 2 FCC Rcd 143, 153 ¶ 66 (1987), on reconsideration, 3 FCC Rcd 22 (1987), pet'n for review denied, Illinois Bell Telephone Co. v. FCC, 883 F.2d 104 (D.C. Cir. 1989); Computer III Remand Proceedings: Bell Operating Company Safeguards, 6 FCC Rcd 7571, 7602-14, ¶¶ 68-95 (1991).

for false entries in the books of a common carrier — a strong deterrent against purposeful violations of the accounting requirements described above. Sections 501 through 504 provide additional penalties — including imprisonment, fines, and forfeiture — for knowing violations of any statutory or regulatory provision. Moreover, if the Commission determines that BellSouth “has ceased to meet any of the conditions required for” interLATA entry, it may revoke interLATA authority under section 271(d)(6).⁸⁴

All of the Act’s and the Commission’s specific statutory and regulatory protections are backed up by federal and state antitrust laws. The weighty corporate and personal penalties (including imprisonment) that may be levied against violators of the antitrust laws, combined with the near impossibility of keeping systematic discrimination or cost-shifting secret, make it most unlikely that Bell company managers would order unlawful practices.⁸⁵

Given its own decisions noting the strength of all these various statutory and regulatory protections, the Commission could hardly find them inadequate to the task in this case. Moreover, the Commission recently determined, in approving British Telecom’s proposed acquisition of MCI, that regulations in the United Kingdom “ensure proper cost allocation, timely and nondiscriminatory disclosure of network technical information, and protection of carrier and

⁸⁴. The Commission has ruled that once a complainant makes a prima facie showing that a Bell company has “ceased to meet the conditions of entry,” the burden shifts to the Bell company to produce evidence of its compliance. Non-Accounting Safeguards Order, 11 FCC Rcd at 22072, ¶ 345. This is a complete answer to claims that discrimination and cross-subsidy, even though detectable, might be hard for rival interexchange carriers to prove.

⁸⁵. See, e.g., 15 U.S.C.A. §§ 1, 2 (Sherman Act); United States Sentencing Comm’n, Guidelines Manual § 2R1.1 (requiring prison sentences for a number of antitrust violations).

consumer proprietary information against unauthorized disclosure,” and thereby “contro[l] BT’s market power” in the provision of access services. Memorandum Opinion and Order, Merger of MCI Communications Corp. and British Telecommunications PLC, GN Docket No. 96-245, FCC No. 97-302 at ¶ 203 n.288 (rel. Sept. 24, 1997). The U.K.’s safeguards, however, are weaker than those under the Act and this Commission’s regulations, see id. ¶¶ 218-223, and do not even include equal access, unbundling, or resale, id. ¶ 202. If the U.K.’s regulations and the potential for future competition are sufficient to prevent harm from BT’s vertical integration with MCI, see id. ¶ 210, then the much stronger U.S. safeguards and the openness of Louisiana markets to competitors under the checklist must be sufficient to address any analogous concerns raised in this proceeding.

2. *Actual Experience with LEC Participation in Adjacent Markets Disproves Theories about Anticompetitive Potential*

BellSouth’s inability to raise prices or restrict output as an interexchange carrier in Louisiana is confirmed by over a decade of experience with LEC entry into markets adjacent to the local exchange, including, in some instances, long distance service. As noted earlier, local exchange carriers have competed fairly and effectively where they have been permitted to offer long distance. See supra at 76-78.⁸⁶ One would not have expected such competitive benefits

⁸⁶ The same is true of BOC participation in the information services and CPE markets. See Hausman Aff. ¶¶ 33, 40. For instance, while the interexchange carriers have tried in various proceedings to cast BellSouth’s introduction of its MemoryCall voice-messaging service as an example of discriminatory conduct, that only shows how bare the record is of any wrongdoing. In 1991, the Georgia PSC did find that BellSouth had used improper marketing practices and had discriminated against competing enhanced service providers and ordered a temporary halt to MemoryCall sales. Yet MCI and Sprint, among others, supported BellSouth’s successful position before the FCC that the PSC lacked jurisdiction to find a violation where BellSouth had acted in